

No. 21-10449

IN THE
**United States Court of Appeals for the
Fifth Circuit**

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P.

Appeal of James Dondero

*On direct appeal by permission from the final judgment of the U.S.
Bankruptcy Court for the Northern District of Texas at No. 19-34054*

**APPELLANT JAMES DONDERO'S LIMITED JOINDER IN
SUPPORT OF REPLY BRIEF FILED BY NEXPOINT ADVI-
SORS, L.P. AND HIGHLAND CAPITAL MANAGEMENT
FUND ADVISORS, L.P.**

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LIMITED JOINDER IN SUPPORT

Mr. Dondero hereby joins in and adopts in full the arguments made by Appellants NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. (collectively, the “Advisors”) in section II.B of their reply brief filed on October 27, 2021 (the “Reply Brief”).¹ Mr. Dondero hereby incorporates by reference section II.B of the Reply Brief filed by the Advisors.²

In particular, Mr. Dondero disputes that he or the Advisors were vexatious litigants. First, Mr. Dondero would note the Appellee brings this matter up in their response brief as justification for the actual issues that are on appeal. However, there was no express finding made in the confirmation order that Mr. Dondero or any other party was a vexatious litigant. Moreover, Mr. Dondero would note that: (i) there was insufficient evidence to support any such finding; and (ii) regardless, the bankruptcy court never made such detailed factual findings that would support such a finding

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Reply Brief.

² For the avoidance of doubt, this joinder is being filed solely with respect to section II.B of the Advisors’ Reply Brief. Mr. Dondero, as an indirect equity interest holder, neither presses an argument as to the Absolute Priority Rule for the purposes of section II.A, nor takes a formal position as to the violations complained of in Section II.C since Mr. Dondero did not include that in his original statement of issues on appeal.

and ruling.³ The Debtor did not seek a finding of vexatiousness and the bankruptcy court was wrong to imply that Mr. Dondero or the Advisors were vexatious litigants with insufficient evidence in the record.⁴

For the reasons set forth in the opening briefs filed by the Advisors and the Funds⁵, and in section II.B of the Reply Brief filed by the Advisors, Mr. Dondero respectfully requests that this Court vacate the Bankruptcy Court's Confirmation Order or vacate the order to the extent it approves the exculpation and injunction/gatekeeper provisions from the Plan and remand the matter to the Bankruptcy Court for further proceedings consistent with the Court's holdings.

³ There was never any hearing or matter on which this issue was directly before the bankruptcy court and no finding has been made on this issue in the order which is on appeal before this Court (or in any other order in the underlying case).

⁴ In fact, the record of the bankruptcy court would show that Mr. Dondero (i) was merely defending himself in the majority of disputes between him and Appellee occurring before the bankruptcy court; and (ii) only objected to a very small percentage of the motions and pleadings filed in the main bankruptcy case.

⁵ The Funds are Highland Income Fund, NexPoint Strategic Opportunities Fund, Highland Global Allocation Fund and NexPoint Capital, Inc.

CONCLUSION

For the reasons set forth above, and in the Funds' and Advisors' opening briefs, Mr. Dondero respectfully requests that this Court vacate the Bankruptcy Court's Confirmation Order.

October 27, 2021

Respectfully submitted,

/s/ Clay M. Taylor

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CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2021, I electronically filed the attached document using the appellate CM/ECF system. I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished via CM/ECF.

October 27, 2021

/s/ Clay M. Taylor

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned counsel certifies that this joinder:

(i) complies with the type-volume limitation of Rule 32(a)(7)(B) because it contains 501 words, including footnotes and excluding the parts exempted by Rule 32(f); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word and is set in Century Schoolbook font in a size equivalent to 14 points or larger.

October 27, 2021

/s/ Clay M. Taylor